

SENATE BILL No. 128

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-12.

Synopsis: Collective bargaining for public safety employees. Allows the police officers and firefighters of a county, city, town, or township to bargain collectively with their employers through an exclusive representative. Specifies the rights and duties of public safety employees and employers in collective bargaining. Requires the education employment relations board to implement and administer collective bargaining law. Provides for judicial review of complaints, mediation, and arbitration. Prohibits public safety lockouts and strikes.

Effective: Upon passage; July 1, 2005.

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January 4, 2005, read first time and referred to Committee on Pensions and Labor.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

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SENATE BILL No. 128

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 36-12 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2005]:
4 **ARTICLE 12. COLLECTIVE BARGAINING FOR PUBLIC**
5 **SAFETY EMPLOYEES**
6 **Chapter 1. Applicability**
7 **Sec. 1. Except as otherwise provided, this article applies to all**
8 **units.**
9 **Chapter 2. Definitions**
10 **Sec. 1. The definitions in this chapter apply throughout this**
11 **article.**
12 **Sec. 2. "Bargain collectively" means to perform the obligation**
13 **of an employer through the employer's executive or designee and**
14 **the designee of the exclusive representative to do the following:**
15 (1) **Meet at reasonable times, including meetings before the**
16 **budget making process.**
17 (2) **Negotiate in good faith concerning the following:**



(A) Salaries.

(B) Wages.

(C) Hours.

(D) Fringe benefits related to salary and wages.

(E) All other terms and conditions of employment, including health and safety conditions.

(3) Execute a written contract incorporating an agreement if a written contract is requested by either party.

Sec. 3. "Bargaining unit" means the full-time employees of a police or fire department who have completed the training required by IC 5-2-1-9. The term does not include a person in an upper level policy making position (as defined in IC 36-8-1-12), except a person in an upper level policy making position included in an agreement in effect on June 30, 2005.

Sec. 4. "Board" means the Indiana education employment relations board created by IC 20-7.5-1-9.

Sec. 5. "Complainant" means an employer, employee, employee organization, or exclusive representative that files a complaint with the board under IC 36-12-4.

Sec. 6. "Employee" means a person who is a member of a bargaining unit.

Sec. 7. "Employee organization" means an organization in which employees participate that exists to deal with an employer concerning any of the following:

- (1) Grievances.
- (2) Labor disputes.
- (3) Wages.
- (4) Rates of pay.
- (5) Hours of employment.
- (6) Employment conditions.

Sec. 8. "Employer" means either of the following:

- (1) A unit to which this article applies.
- (2) A person designated by a unit to which this article applies to act in the unit's interests in dealing with employees.

Sec. 9. "Exclusive representative" means an employee organization that is:

- (1) certified under IC 36-12-3-8 by the board; or
- (2) recognized by the employer as the exclusive representative of the employees in a bargaining unit.

Sec. 10. "Respondent" means a person against whom a complainant files a complaint under IC 36-12-4.

Sec. 11. "Strike" means concerted:

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- (1) willful absence from the:
 - (A) employee's position; or
 - (B) full performance of the duties of employment; or
- (2) stoppage of work.

Chapter 3. Employee Organizations

Sec. 1. The board shall implement and administer this chapter and IC 36-12-4 through IC 36-12-5. To do so, the board may exercise the powers granted to the board under IC 20-7.5-1-9.

Sec. 2. Employees may do the following:

- (1) Form, join, or participate in employee organizations.
- (2) Participate in collective bargaining with the employer through representatives of the employees' choosing.
- (3) Individually or in concert, engage in other activities to establish, maintain, or improve the following:
 - (A) Salaries.
 - (B) Wages.
 - (C) Hours.
 - (D) Fringe benefits related to salary and wages.
 - (E) All other terms and conditions of employment, including health and safety conditions.

Sec. 3. An employer shall manage and direct the employer's operations and activities to the extent authorized by law.

Sec. 4. An employer may do the following:

- (1) Establish policy.
- (2) Direct the work of an employee, except when otherwise provided by law.
- (3) Hire, promote, demote, transfer, assign, and retain an employee in accordance with law and collective bargaining agreement.
- (4) Suspend or discharge an employee in accordance with law.
- (5) Maintain the efficiency of governmental operation.
- (6) Take action necessary to carry out the mission of the police department and fire department.
- (7) Protect the fiscal soundness of and continue public safety services.

Sec. 5. In accordance with rules adopted by the board, the board shall investigate a petition filed with the board by:

- (1) an employee organization alleging that thirty percent (30%) of the employees in the appropriate bargaining unit wish to be represented by an exclusive representative for collective bargaining purposes;
- (2) an employer alleging that at least one (1) employee

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organization has presented a claim to be recognized as the exclusive representative in an appropriate bargaining unit; or (3) an employee or a group of employees alleging that thirty percent (30%) of the employees assert that the designated exclusive representative is no longer the representative of the majority of employees in the bargaining unit.

Sec. 6. If the board has reason to believe that a question of representation exists, the board shall conduct a hearing not later than thirty (30) days after a petition regarding this issue is filed with the board. After the hearing, the board shall do the following if the board finds that a question of representation exists:

(1) Direct an election by secret ballot to be held not later than thirty (30) days after the hearing.

(2) Certify the results not later than ten (10) days after the election.

Sec. 7. If the parties referred to in section 5 of this chapter waive the hearing, the board is not required to conduct the hearing under section 6 of this chapter before a consent election.

Sec. 8. The board shall determine who is eligible to vote in an election directed under section 6 of this chapter and shall establish rules governing the election, subject to the following conditions:

(1) To be placed on the ballot, an employee organization must be designated by more than ten percent (10%) of the employees in the unit.

(2) If none of the choices on the ballot receives a majority of votes in an election but a majority of all votes cast are for representation by some employee organization, the board shall conduct a runoff election.

(3) An employee organization that receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

Sec. 9. An election may not be directed in a bargaining unit or in a subdivision of a bargaining unit within which a valid election has been held in the preceding twelve (12) months.

Sec. 10. Notwithstanding sections 5 through 8 of this chapter, an employer shall recognize a particular employee organization as the exclusive representative of the employees within an appropriate bargaining unit if the employee organization presents to the employer evidence that the employee organization represents a majority of the employees within the bargaining unit, unless an employee organization or a group of employees representing employees within the bargaining unit files a written objection to

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recognition with the employer or the board.

Sec. 11. If:

(1) under section 10 of this chapter, an employee organization provides an employer with evidence that the employee organization represents a majority of the employees within an appropriate bargaining unit; and

(2) no written objection to the recognition of the employee organization as the exclusive representative of the employees within the bargaining unit is filed under section 10 of this chapter by another employee organization or a group of employees representing the employees within the bargaining unit;

the board is not required to hold a hearing or to direct an election on the question of whether the employee organization referred to in subdivision (1) shall be recognized as the exclusive representative of the employees within the bargaining unit.

Sec. 12. Before recognizing an employee organization as an exclusive representative under section 10 of this chapter, the employer must post a written public notice of the employer's intention to recognize the employee organization as the exclusive representative of the employees within the bargaining unit. The notice must be posted for at least thirty (30) days immediately preceding the recognition in a place where notices to employees are customarily posted.

Sec. 13. In a case in which:

(1) there is a historical pattern of recognition; and

(2) the employer has recognized an employee organization as the sole and exclusive bargaining agent for an existing bargaining unit;

the board shall find that the employees in the bargaining unit are represented by the employee organization and recognize the employee organization as the exclusive representative.

Sec. 14. A determination made under this chapter that an employee organization has been chosen as the exclusive representative by a majority of the employees in an appropriate bargaining unit is subject to judicial review under the same procedure, time limits, and other requirements as are set forth in IC 36-12-4-12 through IC 36-12-4-22 for review of an order of the board. The record of the board's determination of the appropriate bargaining unit and the exclusive representative may be a part of the transcript of a proceeding under this section.

Sec. 15. An employer, upon receipt of a written authorization

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from an employee subject to this chapter, shall:

- (1) deduct from the pay of the employee the dues, fees, or assessments designated by the employee organization; and
- (2) remit those amounts to the employee organization.

Sec. 16. A collective bargaining agreement with an employee organization that is recognized as an exclusive representative under this chapter may include a provision requiring an employee who is:

- (1) covered by the collective bargaining agreement; but
- (2) not a member of the employee organization;

to pay a proportionate share of the costs of the collective bargaining process, contract administration, and matters affecting wages, hours, and conditions of employment. This proportionate share may not exceed the amount of dues, fees, or assessments uniformly required of members of the employee organization.

Sec. 17. An employee organization referred to in section 16 of this chapter shall certify to an employer the amount constituting each nonmember employee's proportionate share of the costs of representation. The employer shall:

- (1) deduct the proportionate share payment from the earnings of a nonmember employee; and
- (2) pay the amount to the employee organization.

Sec. 18. Only the exclusive representative of the employees within a bargaining unit may negotiate provisions in a collective bargaining agreement providing for the payroll deduction of any of the following:

- (1) Labor organization dues.
- (2) Fair share payment.
- (3) Initiation fees.
- (4) Assessments.

Sec. 19. Except as provided in section 17 of this chapter, deductions for dues, fees, or assessments may be made only upon an employee's written authorization and shall be continued until:

- (1) revoked in writing; or
- (2) the termination date of the applicable collective bargaining agreement.

Sec. 20. A collective bargaining agreement providing that an employee who is not a member of the employee organization recognized as the exclusive representative pay a proportionate share assessment must safeguard the right of nonassociation based on bona fide religious tenets of an employee. An affected employee may be required to pay an amount equal to the employee's

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proportionate share, determined under a lawful proportionate share provision, to a nonreligious charitable organization agreed on by the employee and the exclusive representative to which the employee would otherwise pay the dues, fees, or assessments.

Sec. 21. If an affected employee referred to in section 20 of this chapter and the exclusive representative are unable to agree on a nonreligious charitable organization for payment under section 20 of this chapter, the board may establish an approved list of charitable organizations to which the payments may be made.

Sec. 22. It is an unfair labor practice for an employer to do any of the following:

(1) Interfere with, restrain, or coerce an employee in the exercise of the rights guaranteed in this article.

(2) Dominate, interfere with, or assist in the formation or administration of an employee organization or contribute financial or other support to an employee organization.

(3) Discriminate in regard to:

(A) hiring practices;

(B) tenure of employment; or

(C) a term or condition of employment;

to encourage or discourage membership in an employee organization.

(4) Discharge or otherwise discriminate against an employee because the employee has:

(A) filed a complaint, an affidavit, or a petition; or

(B) given information or testimony under this chapter or IC 36-12-4.

(5) Refuse to bargain collectively in good faith with an exclusive representative concerning the following:

(A) Wages, including rates of pay.

(B) Salaries.

(C) Hours.

(D) Working conditions.

(E) Other terms or conditions of employment.

(6) Fail or refuse to comply with this chapter or IC 36-12-4 through IC 36-12-5.

Sec. 23. It is an unfair labor practice for an employee organization to do any of the following:

(1) Interfere with, restrain, or coerce:

(A) an employee in the exercise of the rights guaranteed in this article; or

(B) an employer in the selection of an exclusive

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representative for collective bargaining or the adjustment of grievances.

(2) Cause or attempt to cause an employer to discriminate against an employee contrary to section 22 of this chapter.

(3) Refuse to bargain collectively in good faith with an employer if the employee organization is the exclusive representative.

(4) Engage in or influence employees to engage in a strike.

(5) Fail to comply with this article.

Sec. 24. It is not an unfair labor practice for an:

(1) employer to confer during working hours with an employee without loss of time or pay by the employee; or

(2) employee organization to adopt rules concerning the acquisition or retention of membership in the employee organization.

Chapter 4. Complaints

Sec. 1. (a) An employer, employee, employee organization, or exclusive representative who is aggrieved by an alleged unfair labor practice may file a complaint with the board.

(b) The board shall serve a copy of the complaint on the respondent and notify the respondent of the date, time, and place of a hearing on the complaint.

Sec. 2. (a) The board shall hold a hearing on a complaint not less than five (5) days or more than thirty (30) days after the complaint is served on the respondent.

(b) A notice of a hearing may not be issued based on an alleged unfair labor practice occurring more than ninety (90) days before the filing of the complaint, unless the complainant was prevented from filing the complaint because of service in the armed forces of the United States. In that event, the complaint must be filed not more than ninety (90) days after the complainant's discharge from the armed forces of the United States.

Sec. 3. (a) A complaint may be amended by the complainant at any time before the issuance of an order by the board if the board finds that the respondent would not be unfairly prejudiced by the amendment.

(b) The respondent shall file an answer to the original or amended complaint with the board not later than the date set for the hearing. The complainant and respondent are parties and are entitled to appear in person or otherwise give testimony at the hearing. The board may allow an interested person to intervene in the hearing and present testimony.

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1 **Sec. 4. The board is not bound by the rules of evidence in**
 2 **conducting a hearing under this chapter. Testimony received at a**
 3 **hearing shall be reduced to writing and filed with the board. The**
 4 **board may hear:**

5 (1) further testimony; or

6 (2) arguments then or at a later time;

7 **with notice given to the parties.**

8 **Sec. 5. (a) In a complaint proceeding under this chapter, the**
 9 **board shall make a determination based on a preponderance of the**
 10 **evidence.**

11 (b) If the board determines that the respondent was or is
 12 engaged in an unfair labor practice, the board shall state the
 13 findings of fact and serve on the respondent an order that:

14 (1) requires the respondent to cease the unfair labor practice
 15 and take affirmative action, including reinstatement of an
 16 employee with or without back pay, to carry out this article;
 17 and

18 (2) may further require the respondent to submit reports to
 19 the board showing the extent of the respondent's compliance
 20 with the order.

21 **Sec. 6. If the board makes a determination of no unfair labor**
 22 **practice, the board shall state the findings of fact and dismiss the**
 23 **complaint.**

24 **Sec. 7. A hearing may be conducted by a:**

25 (1) member of the board; or

26 (2) hearing examiner or an agency designated by the board;
 27 instead of by the full board. However, after the hearing, the
 28 member, hearing examiner, or agency shall serve on the parties
 29 and file with the board proposed findings and a recommended
 30 order.

31 **Sec. 8. If an exception is not filed by a party within:**

32 (1) twenty (20) days after service on the parties; or

33 (2) a period authorized by the board;

34 **the recommended order filed under section 7 of this chapter**
 35 **becomes the order of the board.**

36 **Sec. 9. If an exception to a recommended order filed under**
 37 **section 7 of this chapter is filed, the full board shall grant review if**
 38 **the board determines that the exception raises a substantial issue**
 39 **of fact or law.**

40 **Sec. 10. If the board determines that an exception to a**
 41 **recommended order filed under section 7 of this chapter does not**
 42 **raise a substantial issue of fact or law, the recommended order**

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becomes the order of the board.

Sec. 11. An order of the board under section 8 or 10 of this chapter is a final order and binding on the parties to the complaint, subject to judicial review under sections 12 through 22 of this chapter.

Sec. 12. Not later than thirty (30) days after the board's:

(1) determination under IC 36-12-3-14; or

(2) determination and order under section 5, 6, or 7 of this chapter;

the board or the complainant may petition the circuit or superior court in the county in which the employer is located for the enforcement of the board's determination and order.

Sec. 13. A party aggrieved by a determination under IC 36-12-3-14 or by the board's order under this chapter may petition the circuit or superior court for a review of the order. If a petition is not filed within the thirty (30) day period computed under:

(1) section 12(1) of this chapter; or

(2) section 12(2) of this chapter;

the order or determination may not be reviewed.

Sec. 14. The commencement of proceedings after the filing of a petition under section 13 of this chapter does not operate as a stay of the board's order or a determination made under IC 36-12-3-13 unless specifically ordered by the court.

Sec. 15. After a petition is filed under section 13 of this chapter, the court shall serve notice of the petition on the opposing party and send a copy to the board.

Sec. 16. In a proceeding filed under section 13 of this chapter, an objection that was not made at the hearing conducted under section 2 of this chapter may not be considered by the court, unless the failure to make the objection is excused because of extraordinary circumstances.

Sec. 17. If either party in a proceeding based on a petition filed under section 13 of this chapter applies to the court for leave to introduce additional evidence and shows to the satisfaction of the court that:

(1) the additional evidence is material; and

(2) there were reasonable grounds for the failure to introduce the evidence in a hearing conducted under section 2 of this chapter;

the court may order the additional evidence to be taken by the board and made a part of the record.

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1 **Sec. 18. After a court orders the board to make additional**
 2 **evidence a part of the record under section 17 of this chapter, the**
 3 **board:**

4 **(1) may modify the findings of fact by reason of the additional**
 5 **evidence; and**

6 **(2) shall file any modified findings and any recommendations**
 7 **for a modification or setting aside of the original order with**
 8 **the court.**

9 **Sec. 19. A party who petitions a court for review of an order of**
 10 **the board under section 13 of this chapter must file a record of the**
 11 **hearing, certified by the board, with the court. Until a record of the**
 12 **hearing is filed, the board may, at any time upon reasonable notice,**
 13 **modify or set aside all or part of a finding or an order made or**
 14 **issued by the board.**

15 **Sec. 20. After the record of a hearing conducted under section**
 16 **2 of this chapter is filed with the court under section 19 of this**
 17 **chapter, the jurisdiction of the court to:**

18 **(1) modify;**

19 **(2) set aside; or**

20 **(3) enforce;**

21 **a board's order and to grant other appropriate relief is exclusive.**
 22 **The court's judgment and decree are final but subject to review in**
 23 **accordance with the rules of court.**

24 **Sec. 21. A petition filed under section 12 of this chapter shall be**
 25 **heard not later than sixty (60) days after the petition is filed. The**
 26 **petition takes precedence over all other civil matters except those**
 27 **under this article filed earlier.**

28 **Sec. 22. In a court's review of an order of the board, the original**
 29 **or modified findings of fact by the board with respect to questions**
 30 **of fact are conclusive if supported by substantial evidence on the**
 31 **record considered as a whole.**

32 **Chapter 5. Mediation and Arbitration**

33 **Sec. 1. Employers and employees shall bargain collectively. The**
 34 **parties shall enter into a contract embodying the matters on which**
 35 **the parties have agreed during the collective bargaining process.**
 36 **A collective bargaining contract may be in effect for more than one**
 37 **(1) year.**

38 **Sec. 2. A contract may not include provisions in conflict with**
 39 **any of the following:**

40 **(1) A right or benefit established by federal or state law.**

41 **(2) Employee rights described in this article.**

42 **(3) Employer rights described in this article.**

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1 **Sec. 3. A contract entered into under section 1 of this chapter**
 2 **must contain a grievance resolution procedure that applies to all**
 3 **employees in the bargaining unit. This procedure must provide for**
 4 **the final and binding arbitration of disputes concerning the**
 5 **administration or interpretation of the contract. The arbitration**
 6 **provisions of the contract are subject to IC 34-57-1.**

7 **Sec. 4. Collective bargaining negotiations must begin by May 1**
 8 **of a year in which a collective bargaining agreement is to expire.**
 9 **The parties shall inform the board of the results of collective**
 10 **bargaining.**

11 **Sec. 5. If the exclusive representative and the employer have not**
 12 **agreed on a contract forty-five (45) days after collective bargaining**
 13 **begins under section 4 of this chapter, either party may:**

14 (1) **notify the board of the inability to reach an agreement;**
 15 **and**

16 (2) **ask the board for mediation to begin.**

17 **Sec. 6. The board shall make a mediator available to the parties**
 18 **at the board's expense not later than seven (7) days after the board**
 19 **is notified under section 5 of this chapter.**

20 **Sec. 7. The mediator provided under section 6 of this chapter**
 21 **shall:**

22 (1) **communicate with both the employer and the exclusive**
 23 **representative and;**

24 (2) **aid the employer and exclusive representative in entering**
 25 **into a contract.**

26 **Sec. 8. If a dispute has not been resolved within twenty-one (21)**
 27 **days after either party makes a request for mediation under**
 28 **section 5 of this chapter, the employer or exclusive representative**
 29 **shall submit a written request for arbitration to the board not later**
 30 **than seven (7) days after the expiration of the twenty-one (21) day**
 31 **period.**

32 **Sec. 9. Not later than ten (10) days after a request for**
 33 **arbitration must be filed under section 8 of this chapter, the**
 34 **employer and the exclusive representative shall:**

35 (1) **each select a member of an arbitration panel; and**

36 (2) **advise each other and the board of the selections made**
 37 **under this section.**

38 **Sec. 10. Not later than seven (7) days after the request of either**
 39 **party for arbitration is submitted to the board under section 8 of**
 40 **this chapter, the board shall select from the permanent staff of**
 41 **factfinders or panel of part-time factfinders established under**
 42 **IC 20-7.5-1-13 five (5) persons as nominees to serve as impartial**

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1 arbitrators on the arbitration panel. Not later than five (5) days
 2 after the selection, the parties shall each alternately strike the
 3 names of two (2) of the nominees, with the first party to request
 4 arbitration under section 8 of this chapter striking first.

5 Sec. 11. The nominee remaining after the striking process under
 6 section 10 of this chapter and the members selected by the
 7 employer and the exclusive representative under section 9 of this
 8 chapter constitute the arbitration panel. The panel member not
 9 struck under section 10 of this chapter is the chairperson of the
 10 arbitration panel.

11 Sec. 12. The chairperson of the arbitration panel shall schedule
 12 a hearing to begin not later than fifteen (15) days after the panel's
 13 membership is selected and shall give notice of the date, time, and
 14 place of the hearing to the parties, to be held at a location
 15 determined by the board. The chairperson shall preside over the
 16 hearing and take testimony.

17 Sec. 13. The following rules apply to an arbitration hearing held
 18 under this chapter:

- 19 (1) Oral or documentary evidence and other data considered
 20 relevant by the arbitration panel may be received in evidence.
- 21 (2) The hearing is informal, and the rules of evidence do not
 22 apply.
- 23 (3) A verbatim record of the hearing shall be made.
- 24 (4) The arbitrator shall arrange for the necessary recording
 25 service.
- 26 (5) Transcripts may be ordered at the expense of the party
 27 ordering the transcripts, but the transcripts are not necessary
 28 for a decision by the arbitration panel.

29 Sec. 14. If a member of an arbitration panel assembled under
 30 this chapter is a public officer or employee, the public officer or
 31 employee continues on the payroll of the employer without loss of
 32 pay.

33 Sec. 15. A hearing conducted by an arbitration panel under this
 34 chapter may be adjourned periodically but must be concluded not
 35 later than thirty (30) days after the date of commencement unless
 36 otherwise agreed to by the parties. Arbitration proceedings under
 37 this chapter may not be interrupted or terminated by an unfair
 38 labor practice charge filed by either party at any time.

39 Sec. 16. An arbitration panel may do the following:

- 40 (1) Administer oaths.
- 41 (2) Require the attendance of witnesses and the production of
 42 evidence considered material to a determination of an issue in

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dispute.

(3) Issue a subpoena to secure a witness and evidence.

Sec. 17. If:

(1) a person refuses to obey a subpoena or to be sworn or to testify; or

(2) a witness, a party, or an attorney is guilty of contempt at a hearing;

the arbitration panel may request the circuit or superior court in the county where the hearing was held to issue an order.

Sec. 18. The failure to obey an order issued at the request of an arbitration panel under section 17 of this chapter may be punished by the court as contempt.

Sec. 19. Before an award is made, the chairperson of an arbitration panel may remand the dispute to the parties for further collective bargaining for a period not to exceed two (2) calendar weeks. If the dispute is remanded, the time provisions of this chapter are extended for a period equal to that of the remand. The chairperson of the arbitration panel shall notify the board of a remand under this section.

Sec. 20. Not later than the conclusion of a hearing held under section 12 of this chapter, the arbitration panel shall identify the economic issues in dispute and direct each party to submit to the arbitration panel and to each other each party's last offer of settlement on each economic issue within the time limit the panel prescribes. The determination of an arbitration panel is conclusive concerning the:

(1) identification of issues that are in dispute; and

(2) economic issues.

Sec. 21. (a) The arbitration panel shall make written findings of fact and adopt a written opinion not later than:

(1) thirty (30) days after the conclusion of a hearing; or

(2) the end of any further additional periods to which the parties agree.

(b) The arbitration panel shall mail a copy of the opinion to the:

(1) parties;

(2) representatives of the parties; and

(3) board.

Sec. 22. (a) The arbitration panel shall adopt the last offer of settlement as to economic issues on an issue by issue basis that more nearly complies with the applicable factors prescribed in section 23 of this chapter.

(b) The findings, opinions, and order as to all other issues must

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also be based on the applicable factors prescribed in section 23 of this chapter.

Sec. 23. If there is no agreement between the parties, or if there is an agreement but the parties have begun negotiations or discussions for a new agreement or an amendment of the existing agreement and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base the arbitration panel's findings, opinions, and order on the following factors:

- (1) The lawful authority of the employer.
- (2) The stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the employer to meet the costs.
- (4) A comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of employees performing similar services and with other employees generally in comparable communities.
- (5) The average consumer prices for goods and services.
- (6) The overall compensation currently received by the employees, including the following:
 - (A) Direct wage compensation, vacations, holidays, and other excused time.
 - (B) Insurance, pension, medical, and hospitalization benefits.
 - (C) The continuity and stability of employment.
- (7) Changes in any of the circumstances during the arbitration proceedings.
- (8) Other factors normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, factfinding, or arbitration between parties in public or private employment.

Sec. 24. If an employer's fiscal year begins:

- (1) after the initiation of arbitration procedures under this chapter; and
- (2) before the arbitration decision or enforcement of the decision;

this occurrence does not render a dispute moot or impair the jurisdiction or authority of the arbitration panel or the decision.

Sec. 25. Except as provided in section 26 of this chapter, an increase in compensation awarded by an arbitration panel under

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1 this chapter is effective at the beginning of the employer's fiscal
2 year beginning on or after the date of the arbitration award.

3 Sec. 26. If a fiscal year begins after the initiation of arbitration
4 procedures, section 25 of this chapter does not apply. However, an
5 increase in compensation awarded by an arbitration panel under
6 this chapter may be retroactive to the beginning of the fiscal year.

7 Sec. 27. The parties may amend or modify an award of
8 arbitration under this chapter by stipulation.

9 Sec. 28. Upon petition by the employer or the exclusive
10 representative, an order of an arbitration panel under this chapter
11 may be reviewed by the circuit or superior court of the county in
12 which the employer is located. The arbitration panel's order may
13 be reviewed only on the following grounds:

14 (1) The arbitration panel was without authority or exceeded
15 the arbitration panel's authority.

16 (2) The order is arbitrary or capricious.

17 (3) The order was procured by fraud, collusion, or unlawful
18 means.

19 Sec. 29. A petition for review of an order of an arbitration panel
20 under section 28 of this chapter must be filed with the court not
21 later than ninety (90) days after the issuance of the arbitration
22 order. The pendency of the proceeding for review does not
23 automatically stay the order of the arbitration panel.

24 Sec. 30. If the court in proceedings on a petition for review of an
25 order of an arbitration panel finds the appeal or petition frivolous,
26 the party receiving the final adverse order from the court shall pay
27 reasonable attorney's fees and costs to the successful party.

28 Sec. 31. If the court's decision in a proceeding on a petition for
29 review of an order of an arbitration panel affirms an award of
30 money, a retroactive award bears interest at the rate of twelve
31 percent (12%) annually from the effective retroactive date.

32 Sec. 32. During the pendency of proceedings before an
33 arbitration panel, current wages, hours, and other conditions of
34 employment may not be changed by either party without the
35 consent of the other. However, a party may consent to a change
36 without prejudice to the party's rights or position under IC 36-12-3
37 or this chapter.

38 Sec. 33. An employee covered under IC 36-12-3 and this chapter
39 may not withhold services.

40 Sec. 34. An employer may not lockout or prevent an employee
41 from performing services.

42 Sec. 35. (a) All terms decided on by an arbitration panel under

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1 this chapter must be included in an agreement to be submitted to
2 the employer's legislative body for ratification and:

3 (1) adoption by ordinance if the unit is a county or
4 municipality; or

5 (2) passage of a resolution if the unit is a township.

6 (b) The legislative body of the unit shall review each of the terms
7 decided by an arbitration panel under this chapter.

8 Sec. 36. If the legislative body of a unit does not reject a term of
9 an arbitration panel's decision by a vote of at least sixty percent
10 (60%) of all the members of the body not later than twenty (20)
11 days after the issuance of the decision, the term becomes a part of
12 the collective bargaining agreement.

13 Sec. 37. If the legislative body of a unit rejects a term of the
14 arbitration panel's decision, the legislative body must issue written
15 reasons for the rejection of the term to the parties not later than
16 twenty (20) days after the rejection. The parties shall return to the
17 arbitration panel not later than thirty (30) days after the issuance
18 of the reason for rejection for further proceedings and the issuance
19 of a supplemental decision regarding the rejected terms.

20 Sec. 38. A supplemental decision made under section 37 of this
21 chapter by an arbitration panel must be submitted to the legislative
22 body of a unit for ratification in accordance with sections 35
23 through 37 of this chapter.

24 Sec. 39. The voting requirements of section 36 of this chapter
25 apply to all disputes submitted to arbitration, notwithstanding
26 inconsistent voting requirements that may be contained in a
27 collective bargaining agreement between the parties.

28 Sec. 40. The employer shall pay all reasonable costs of a
29 supplemental proceeding under section 37 of this chapter,
30 including the exclusive representative's reasonable attorney's fees
31 as established by the board.

32 Sec. 41. The employer and the exclusive representative may
33 agree to submit unresolved disputes concerning wages, hours,
34 terms, and conditions of employment to an alternative form of
35 impasse resolution without regard to this chapter.

36 Sec. 42. Except as provided in sections 6 and 40 of this chapter,
37 the cost of procedures under this chapter as determined by the
38 board shall be paid equally by the parties. The board shall
39 establish a complete procedure for the collection and payment of
40 the cost.

41 Sec. 43. After the exhaustion of an arbitration mandated by this
42 chapter or procedures mandated by a collective bargaining

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1 agreement, a civil action for the violation of an agreement between
 2 an employer and a labor organization representing employees may
 3 be brought by either party to the agreement in the circuit or
 4 superior court of the county in which the employer is located.

5 **Chapter 6. Miscellaneous Provisions**

6 **Sec. 1.** If a provision of this chapter, IC 36-12-3, IC 36-12-4, or
 7 IC 36-12-5 conflicts with an Indiana statute, rule, or executive
 8 order relating to wages, hours, and conditions of employment and
 9 employment relations, this chapter, IC 36-12-3, IC 36-12-4, and
 10 IC 36-12-5 prevail.

11 **Sec. 2.** This chapter, IC 36-12-3, IC 36-12-4, and IC 36-12-5
 12 provide the exclusive manner for an employer to exercise the
 13 power to bargain collectively with the employer's employees.

14 **Sec. 3.** An employee or exclusive representative may not
 15 participate in a strike against an employer.

16 **Sec. 4.** An employee engaging in a strike is subject to discharge
 17 by the employer, as provided in IC 36-8-3-4.

18 **Sec. 5.** An exclusive representative that engages in or sanctions
 19 a strike loses the right to represent the employees for one (1) year
 20 after the date of the action.

21 **Sec. 6.** An employer may not pay an employee for days during
 22 which the employee was engaged in a strike.

23 **SECTION 2.** [EFFECTIVE JULY 1, 2005] (a) This act does not:

24 (1) apply to or abrogate a contract or an agreement in effect
 25 on June 30, 2005; or

26 (2) preclude arbitration on a provision in a contract or an
 27 agreement referred to in subdivision (1).

28 (b) This SECTION expires July 1, 2008.

29 **SECTION 3.** [EFFECTIVE UPON PASSAGE] (a)
 30 Notwithstanding IC 36-12-3-5, as added by this act, the Indiana
 31 education employment relations board shall carry out the duties
 32 imposed upon it under IC 36-12-3-5 under interim written
 33 guidelines approved by the chairman of the Indiana education
 34 employment relations board.

35 (b) This SECTION expires on the earlier of the following:

36 (1) The dates rules are adopted under IC 36-12-3-5.

37 (2) December 31, 2006.

38 **SECTION 4.** [EFFECTIVE UPON PASSAGE] (a)
 39 Notwithstanding IC 36-12-3-8, as added by this act, the Indiana
 40 education employment relations board shall carry out the duties
 41 imposed upon it under IC 36-12-3-8 under interim written
 42 guidelines approved by the chairman of the Indiana education

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1 **employment relations board.**
2 **(b) This SECTION expires on the earlier of the following:**
3 **(1) The dates rules are adopted under IC 36-12-3-8.**
4 **(2) December 31, 2006.**
5 **SECTION 5. An emergency is declared for this act.**

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